IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 17.11.2006

CORAM

THE HON'BLE MR.JUSTICE M.JAICHANDREN

Writ Petition No.16700 of 2001

M.Joseph .. Petitioner

vs.

1. The Government of Tamilnadu,
   rep. by Secretary to the Government,
   Education Department,
   Fort St. George,
   Chennai - 9.

2. The Director of School Education,
   College Road, Chennai - 6.

3. The Chief Educational Officer,
   Tuticorin,
   Tuticorin District.

4. The District Educational Officer,
   Kovilpatti,
   Tuticorin District.

5. The Correspondent,
   R.C.Susai Hr. Sec. School,
   Kalugumalai,
   Tuticorin District. .. Respondents

2nd respondent cause title amended as per order of this Court dated 17.11.2006 made in WPMP.No.17774/06 in WP.No.16700/01.

Writ Petition filed under Article 226 of the Constitution of India as stated therein.

For petitioner : Mr.R.Saseetharan
For respondents : Mr.C.Thirumaran
Government Advocate
for R1 to R4

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O R D E R

The writ petition has been filed for the issuance of a writ of certiorarified mandamus to call for the records of the second respondent in relation to the proceedings issued in N.K.No.132938/D4/98, dated 31.3.2000 and the proceedings of the fourth respondent in relation to the proceedings issued in N.K.7609/A4/96, dated 22.8.1996 and the order of the fifth respondent Management, dated 14.8.2000, issued in proceedings No.Nil and the order of the fourth respondent issued in relation to the proceedings issued in N.K.No.7609/A1/96, dated 16.11.2000, quash the same and to issue a consequential direction to the respondents to grant pay protection in the post of Middle School Headmaster and to grant selection and special grade pay in the post of Middle School Headmaster and to release the amount of Rs.71,282/- (Rupees Seventy one thousand two hundred and eighty two only), which was withheld by the respondents as excess amount paid and to fix the pension in the post of Middle School Headmaster and to pay the arrears of pension with interest at 18% per annum.

The brief facts of the case, as stated by the petitioner, are as follows:

2. The petitioner was appointed as a Secondary Grade Teacher, on 12.10.1970, in Saint Mary Middle School, Kalugumalai. He was promoted as the Headmaster of the said School, on 8.3.1976. By an order of the Government issued in G.O.Ms.No.1297, Education Department, dated 21.7.1979, a policy decision was made to the effect that the post of Middle School Headmaster should be filled up by a B.Ed. qualified Teacher. Prior to the said Government Order, the senior most Secondary Grade Teacher in the School was promoted as the Middle School Headmaster. The Headmaster so appointed as per G.O.Ms.No.1297, Education Department, dated 21.7.1979, was to be paid B.Ed. Scale of pay. However, in the said Government Order, it was stated that the post of Secondary Grade Headmaster already existing in the Middle School in which B.T. Grade Headmaster was posted will be re-designated and continued as an Additional Headmaster and the incumbent will be given pay protection, as if he had continued to be the Headmaster.

3. By the proceedings of the District Educational Officer, dated 4.9.1980, one post of Middle School Headmaster in the B.T. cadre was allotted to Saint Mary's Middle School, Kalugumalai. The District Educational Officer, had also stated that the Secondary Grade Headmaster already existing will be re-designated and continued as an Additional Headmaster and pay protection will be given, as if he had continued to be a Headmaster. As the post was allotted as per the new policy of the Government, pay protection was given to the Headmaster on the ground that they were facing reversion and that they should not be affected by the reversion due to the new policy of the Government. Consequent to the allotment and the appointment of B.Ed. Headmaster, the petitioner was

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posted as an Additional Headmaster of the School with full pay protection, with effect from 8.9.1980, as if the petitioner had continued as the Headmaster. By an order of the Management, dated 1.6.1982, the petitioner had been absorbed as a Secondary Grade Teacher on the ground that the St. Mary's Middle School was upgraded as R.C. Susai High School. In the order of absorption, dated 1.6.1982, the petitioner was absorbed as a Secondary Grade Teacher and by the same order, he was given pay protection for the post of Middle School Headmaster, on the ground that he was working as the Headmaster of the School and subsequently, the petitioner had been re-designated as an Additional Headmaster with full pay protection. In the order of absorption, dated 1.6.1982, it was specifically stated that the Middle School Headmaster's pay would be given to the petitioner. After the absorption, the petitioner had been paid salary in the post of Middle School Headmaster, as if he had continued as the Headmaster of the Middle School.

4. By an order, dated 20.9.1994, the petitioner was given Selection Grade in the post of Middle School Headmaster. The petitioner had made a representation, on 8.3.1996, requesting the respondents to award the Selection Grade on completion of 10 years of service and to award the special grade on the same basis. By an order, dated 22.8.1996, it was directed that the petitioner should be given only a Secondary Grade Teacher scale of pay and selection grade and special grade pay cannot be given to the petitioner. It was stated that rule 4(3) and G.O.Ms.No.1178, Education Department, dated 22.12.1993, do not apply to the petitioner's case.

5. In fact, according to the petitioner, it is G.O.Ms.No.1429, Education Department, dated 28.7.1980, which applies to the petitioner's case, providing for pay protection to the petitioner in the post of Middle School Headmaster. The District Educational Officer had rejected the claim of the petitioner and the pay protection given to the petitioner for all the past years had been withdrawn. Therefore, the petitioner had preferred an appeal to the Chief Educational Officer, on 30.9.1996 and 4.10.1996, requesting him to grant pay protection in the post of Middle School Headmaster on the ground that he was reverted from the post of Middle School Headmaster and re-designated with pay protection in the post of Middle School Headmaster as per the policy of the Government.

6. The Chief Educational Officer, by his proceedings, dated 27.7.1998, had stated that the Appellate Authority for the teachers working in the private schools was the Joint Director of Secondary Education. Therefore, the petitioner had preferred an appeal to the Joint Director of Secondary Education. The petitioner had also made an appeal to the Director of School Education requesting for grant of pay protection in the post of Middle School Headmaster. The Management of the School had also recommended the petitioner's case. The District Educational officer, in his proceedings, dated 28.11.1998, had informed the petitioner that his appeal was forwarded to the Joint Director of School Education

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(Secondary). However, in the order, dated 31.3.2000, it was stated that the petitioner was not entitled for the pay of a Middle School Headmaster. The petitioner reliably understands that the matter decided by the Director of School Education, in his proceedings, dated 31.3.2000, does not relate to the petitioner. It relates to one A.Joseph, who was working as a Tamil Pandit in R.C. Middle School.

7. It has been further stated by the petitioner that he had retired from service, on 31.5.2000, on attaining the age of superannuation. When the question of grant of pension to the petitioner arose, the authorities concerned were not prepared to pay the pensionary benefits to the petitioner, since the matter relating to pay fixation was under dispute. Therefore, the petitioner was compelled to give an undertaking before the Management saying that he may be treated as a Secondary Grade Teacher and the alleged excess amount of Rs.71,282/- paid in the scale of pay of Middle School Headmaster be recovered from the gratuity. Thereafter, the petitioner's pay was fixed in the scale of pay of Secondary Grade Teacher and the pension had been paid on that basis.

8. The petitioner now disputes the agreement stating that it was illegal and violative of the provisions of the Tamil Nadu Private Schools Regulations Act, and it is also violative of article 14 of the Constitution of India. In such circumstances, the petitioner had challenged the proceedings of the first respondent, dated 31.3.2000 and other related orders and for consequential direction to the respondents to grant pay protection in the post of Middle School Headmaster and to release the amount of Rs.71,282/-, which was withheld by the respondents as excess amount paid.

9. From the records made available before this Court, it is seen that the Government of Tamil Nadu in G.O.Ms.No.1297, Education Department, dated 21.7.1979, had decided that under a phased programme, Middle Schools under all kinds of Managements should be provided with Headmasters in the scale of Rs.450-20-590-25-740-30-800, manned either by a B.Ed. or a Tamil Pandit Grade Teacher. In G.O.Ms.No.1429, Education Department, dated 28.7.1980, it has been stated that the post of Secondary Grade Headmaster already existing in the Middle School to which a B.T. Grade Headmaster's post is allotted will be re-designated and continued as 'Additional Headmaster' and its incumbent will be given full pay protection for drawing pay (special pay and allowance) from time to time in future, as if he had continued to be a Headmaster. By the proceedings issued by the District Educational Officer, Kovilpatti, in RC.No.21955/E1/80, dated 4.9.1980, St Mary's Middle School, Kalugumalai, had been allotted one B.T. Post in the scale of pay of Rs.450-20-590-25-740-50-800. By the said proceedings, the Secretaries of the concerned Middle Schools were also informed that in consequence to the appointment of a B.T. decree holder as Headmaster in the above said Middle School, the post of secondary grade Headmaster already existing will be re-designated and continued as an Additional Headmaster and its incumbent should be given full protection

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for drawing the pay (special pay and allowances) from time to time in future, as if he had continued to be a Headmaster.

10. Further, by the subsequent proceedings of the Manager and Correspondent, R.C.Susai High School, dated 1.6.1982 and by the proceedings of Special Commissioner and Secretary, Department of Education, dated 15.6.1988, it has been made clear that there would be pay protection as contended by the petitioner. However, by the impugned proceedings of the respondents, the pay protection given earlier had been nullified and the respondents have refused to release the amount of Rs.71,282/- due to the petitioner as retirement benefits. The petitioner had further stated that the pay protection granted to him cannot be withdrawn by the respondents, after the lapse of so many years and without giving sufficient opportunity to the petitioner to prove his case.

11. The learned counsel appearing on behalf of the respondents is only relying on the orders passed by the Director of School Education and the order of the fourth respondent, dated 22.8.1996, to state that the orders for recovery of the amounts already paid to the petitioner had been rightly passed. However, the petitioner's contentions with regard to the pay protection granted to him by the earlier proceedings was not seriously challenged.

12. It was submitted on behalf of the petitioner that it would suffice if the amount of Rs.71,282/- is paid to him as the retirement benefits due to him, without any interest thereon, by setting aside the order of the fourth respondent, dated 22.8.1996.

13. In such circumstances, this Court is of the considered view that the retirement benefits of Rs.71,282/- withheld by the respondents, as excess amount is liable to be paid to the petitioner. Therefore, the order of the fourth respondent Na.Ka.No.7609/A4/96, dated 22.8.1996, is set aside and the respondents are directed to pay the amount of Rs.71,282/-, due to the petitioner as retirement benefits, without any interest thereon, within a period of eight weeks from the date of a receipt of copy of this order.

14. With the above directions, the writ petition is ordered accordingly. No costs.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

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To

1. The Secretary to the Government,
   The Government of Tamilnadu,
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   Tuticorin District.

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   Kovilpatti,
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1 cc To The Government Pleader, SR.56120.

W.P.No.No.16700 of 2001

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